

Comptroller of the Currency, Treasury

§ 18.1

(c) Paragraph (a) of this section does not apply if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's parent bank holding company files current and periodic reports pursuant to section 13 of the Exchange Act (15 U.S.C. 78m).

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to 12 CFR 5.33(e)(8).

[68 FR 68492, Dec. 9, 2003]

§ 16.30 Request for interpretive advice or no-objection letter.

Any person requesting interpretive advice or a no-objection letter from the OCC with respect to any provision of this part shall:

(a) File a copy of the request, including any supporting attachments with the Securities, Investments, and Fiduciary Practices Division at the address listed in § 16.17;

(b) Identify or describe the provisions of this part to which the request relates, the participants in the proposed transaction, and the reasons for the request; and

(c) Include with the request a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

§ 16.31 Escrow requirement.

The OCC may require that any funds received in connection with an offer or sale of securities be held in an independent escrow account at an unrelated insured depository institution when the use of an escrow account is in the best interests of shareholders.

§ 16.32 Fraudulent transactions and unsafe and unsound practices.

(a) No person in the offer or sale of bank securities shall directly or indirectly:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading; or

(3) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security of a bank.

(b) Nothing in this section limits the applicability of section 17 of the Securities Act (15 U.S.C. 77q) or section 10(b) of the Exchange Act (15 U.S.C. 78j) or Rule 10b-5 promulgated thereunder (17 CFR 240.10b-5).

(c) Any violation of this section also constitutes an unsafe or unsound practice under 12 U.S.C. 1818.

(d) Commission Rule 175 (17 CFR 230.175—Liability for certain statements by issuers) applies to this part.

§ 16.33 Filing fees.

(a) Filing fees must accompany certain filings made under the provisions of this part before the OCC will accept those filings. The applicable fee schedule is provided in the Notice of Comptroller of the Currency Fees published pursuant to § 8.8 of this chapter.

(b) Filing fees must be paid by check payable to the Comptroller of the Currency.

PART 18—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION BY NATIONAL BANKS

Sec.

18.1 Purpose and OMB control number.

18.2 Definitions.

18.3 Preparation of annual disclosure statement.

18.4 Contents of annual disclosure statement.

18.5 Alternative annual disclosure statements.

18.6 Signature and attestation.

18.7 Notice of availability.

18.8 Delivery.

18.9 Disclosure of examination reports.

18.10 Prohibited conduct and penalties.

18.11 Safe harbor provision.

AUTHORITY: 12 U.S.C. 93a, 161, and 1818.

SOURCE: 53 FR 3866, Feb. 10, 1988, unless otherwise noted.

§ 18.1 Purpose and OMB control number.

(a) *Purpose.* The purpose of this part is to require all national banks and federal branches and agencies to prepare

§ 18.2

an annual financial disclosure statement, and to make this statement available to security holders, depositors, and anyone who requests it. The bank may, at its option, supplement this financial disclosure statement with narrative information management deems important. The availability of this information is expected to promote better public understanding of, and confidence in, individual national banks and the national banking system. The annual disclosure statement will serve to complement the supervisory efforts of the Office of the Comptroller of the Currency (OCC) to promote bank safety and soundness and public confidence in the national banking system.

(b) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557-0182.

[53 FR 3866, Feb. 10, 1988, as amended at 60 FR 57332, Nov. 15, 1995]

§ 18.2 Definitions.

Unless otherwise defined in this part, the terms used have the same meaning as in the instructions to the Consolidated Reports of Condition and Income (*Call Reports*).

§ 18.3 Preparation of annual disclosure statement.

(a) Beginning with calendar year 1987, each national bank and federal branch and agency shall prepare an annual disclosure statement as of December 31. The annual disclosure statement shall contain information required by § 18.4 (a), (b) and (d) may include other information that bank management believes important, as discussed in § 18.4(c).

(b) The annual disclosure statement shall be available by March 31 of each year, or by an earlier date as necessary to be made available to security holders in advance of the annual meeting of shareholders. A bank shall continually make its annual disclosure statement available until the annual disclosure statement for the succeeding year becomes available.

12 CFR Ch. I (1-1-06 Edition)

§ 18.4 Contents of annual disclosure statement.

(a) *Information concerning financial condition and results of operations.* The annual disclosure statement for any year shall reflect a fair presentation of the bank's financial condition at the end of that year and the preceding year. The annual disclosure statement may, at the option of bank management, consist of the bank's entire Call Reports, or applicable portions thereof, for the relevant periods. At a minimum, the statement must contain the same or comparable information as provided in the following Call Report schedules.

(1) For national banks:

(i) Schedule RC (Balance Sheet);

(ii) Schedule RC-N (Past Due and Nonaccrual Loans, Leases, and Other Assets—column A and memorandum Item #1 need not be included);

(iii) Schedule RI (Income Statement);

(iv) Schedule RI-A (Changes in Equity Capital); and

(v) Schedule RI-B (Charge-Offs and Recoveries and Changes in Allowance for Loan and Lease Losses—part I may be omitted).

(2) For federal branches or agencies:

(i) Schedule RAL (Assets and Liabilities);

(ii) Schedule E (Deposit Liabilities and Credit Balances); and

(iii) Schedule P (Other Borrowed Money).

(b) *Other required information.* The annual disclosure statement shall include such other information as the OCC may require. This may include a discussion of enforcement actions when the OCC deems it in the public interest.

(c) *Optional narrative.* Bank management may, at its option, provide a narrative discussion to supplement the annual disclosure statement. This narrative may include information that bank management deems important in evaluating the overall condition of the bank. Information that bank management might present includes, but is not limited to, a discussion of the financial data; pertinent information relating to mergers and acquisitions; the existence and underlying causes of enforcement actions; business plans; material changes in balance sheet and income statement items; and future plans.